IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 95 OF 2002

Pune Zilla Sahakari Dudh Utpadak Sangh
Maryadit & Ors. .. Petitioners.

Vs.

State of Maharashtra & Anr. .. Respondents

Kirti H. Parekh for the Petitioners..

Mrs. M.M. Deshmukh, PP for State.

D.R. More, Advocate for Respondent No. 2.

CORAM: S.K. SHAH, J.

DATE : 20th June, 2006.

P.C.

This Application is taken up for final hearing with the consent of counsels on both sides.

2. This application is made for quashing the prosecution pending before the learned JMFC, Pimpri for the offence punishable under the provisions of Prevention of Food Adulteration Act.

3. On 5/7/1994 the Food Inspector collected the sample of milk from the premises of Telco Canteen run by the accused persons. He then drew the sample of milk from the cans. One of the sample was examined by the public analyst and the public analyst sent his report dated 13/7/94. The milk was not conforming to the prescribed standard. Thereafter the complainant filed the complaint in the court of Judicial Magistrate First Class, Pimpri on 5/2/1996 i.e., after about 19 months.

4. The applicants/accused made an application before the Magistrate for sending one of the samples to the Central Food Laboratory for reanalysis on 14/2/1996. However, the learned Magistrate did not pass any order on it and kept the application pending. No order was passed thereafter.

5. The learned counsel for the applicants/accused submits that the Magistrate recorded the evidence of the witnesses before charge and proceeded with the trial of the matter.

6. Learned counsel for the applicants submits that since the complaint was filed after 19 months after the drawing of the sample the valuable right available to the applicants under section 13(2) of the Prevention of Food Adulteration Act has been lost. He submits that the sample of milk even if by adding preservatives could not be said to be fit for examination and analysis after the period of 6 months. The right available under section 13(2) of the Prevention of Food Adulteration Act to send the sample for reanalysis to the Central Food Laboratory is lost and he therefore submits that the prosecution should be quashed. In support of his submission he has relied on the decision of the Apex Court in the case of Municipal Corporation of Delhi v/s. Ghisa Ram. I have gone through the said decision in the case of Municipal Corporation of Delhi v/s. Ghisa Ram reported in 1975 Prevention of Food Adulteration Cases 186 as also the decision of this court in the case of State of Maharashtra v/s. Laxman N. Khamkar reported in 1977(1) Prevention of Food Adulteration Cases 13.

7. The Apex Court in the aforesaid case has held that when a valuable right is conferred by section 13(2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that that right will not be denied to him. The right is a valuable one. The right has been given to the vendor. In the case before the Apex Court there was a

delay of 7 months in filing the complaint.

8. In the case of State of Maharashtra v/s. Laxman N. Khamkar it is held that the prosecution is vitiated as the complaint was filed after about 4.1/2 months. In the case before this court the sample is milk and there is delay of more than 19 months. The right accrued to the applicants for sending the sample to the Central Food Laboratory for reanalysis under section 13(2) of the Prevention of Food Adulteration Act is denied to the applicants. As a result of delay in filing the complaint the prosecution is vitiated.

9. Learned counsel for the complainant has strongly opposed the arguments on behalf of the applicants. In his submission, the intimation was given to the vendor within the stipulated period from the receipt of the report of the analyst but the applicant/accused did not take any step. However this submission is not acceptable as the right accrued to the applicant/accused is denied.

10. Consequently, the application is allowed. The proceedings pending before the Judicial Magistrate First Class, Pimpri, vide case No. 80/96, is hereby quashed.

(S. K. SHAH, J)